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REVIEW OF THE WORK OF THE SUB-COMMISSION

Working paper prepared by the secretariat on the question of the reform of the procedure governed by Economic and Social Council resolution 1503 (XLVIII)

1. By decision 1993/104 of 12 August 1993, the Sub-Commission on Prevention of Discrimination and Protection of Minorities decided to study the question of the reform of the procedure governed by Economic and Social Council resolution 1503 (XLVIII) of 27 May 1970, including the possible abolition of that procedure, at its forty-sixth session, under item 3 of its provisional agenda, and requested the secretariat to prepare a working paper on the subject and to obtain the opinion of the United Nations Legal Counsel on the interpretation to be given to paragraph 10 of resolution 1503 (XLVIII). The resolution sets out the first United Nations procedure for dealing with communications relating to violations of human rights and fundamental freedoms. Paragraph 10 provides that the procedure should be reviewed "if any new organ entitled to deal with such communications should be established within the United Nations or by international agreement".

2. The present document constitutes the working paper requested by the Sub-Commission. The opinion of the Legal Counsel will be issued separately in an addendum to the present document.

3. In addition, documents E/CN.4/1317 (relating to the initial review of the 1503 procedure) and E/CN.4/1994/42 (concerning the functioning of the various treaty based and non-treaty based procedures) may be considered

relevant and will be made available to the members of the Sub-Commission in the context of the present exercise. To avoid overlapping and duplication of work, an effort will be made not to repeat here the text of these documents.

Initial review of the 1503 procedure

4. It may be worth recalling that, following the entry into force of the International Covenant on Civil and Political Rights in 1976, the Commission on Human Rights initiated a review of the 1503 procedure because a "new organ", the Human Rights Committee, had been established (in 1977) to deal with communications concerning violations of human rights under the procedure governed by the Optional Protocol to the Covenant. Thus, in resolution 16 (XXXIV), adopted on 7 March 1978, the Commission requested the Secretary-General to prepare an analysis of existing United Nations procedures for dealing with communications concerning violations of human rights, "to assist the Commission in studying measures to avoid possible duplication and overlapping of work in the implementation of these procedures".

5. The requested analysis, focusing on the coexistence of the 1503 procedure and the Optional Protocol procedure, was placed before the Commission the following year in document E/CN.4/1317. Apart from describing in some detail secretariat handling of communications received, the implementation of both procedures by the bodies concerned and the basic differences between the two procedures, the document sets out practical suggestions aimed at avoiding possible overlapping or duplication of work (E/CN.4/1317, paras. 30-36). When introducing the analysis, the Assistant Director of the then Division of Human Rights pointed out that the Human Rights Committee had already had occasion to determine that the 1503 procedure did not affect its work under the Optional Protocol. The former procedure was concerned with the examination of situations which appeared to reveal a consistent pattern of gross violations of human rights, while the latter procedure dealt with individual cases, on a case by case basis. The Assistant Director observed that, from the legal standpoint, there was no danger of conflict between the two procedures and that overlapping and duplication would be avoided by the measures suggested in the analysis prepared by the Secretary-General (E/CN.4/SR.1510, para. 7).

6. The records of the Commission do not reveal that there was any discussion of document E/CN.4/1317. In the absence of any objection, however, the secretariat has applied the measures suggested therein for avoiding overlapping or duplication for the past 15 years. Mutatis mutandis, the same working methods have been applied after the entry into force of other treaty based procedures for dealing with communications concerning violations of human rights, i.e. the procedure governed by article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination (implemented by the Committee on the Elimination of Racial Discrimination) and the procedure governed by article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (implemented by the Committee against Torture). It may be mentioned that all of the procedures referred to above are regarded as confidential. The meetings of the implementing bodies are closed and the working documents are confidential. Under the treaty based procedures, however, all decisions of a final nature are made public.

Further measures relevant to the review of the 1503 procedure

7. In the course of the years, a number of public, non-treaty based procedures have been established, both thematic and country oriented, for the consideration of alleged human rights violations. These mandates, mostly established by the Economic and Social Council at the recommendation of the Commission on Human Rights, are entrusted to special rapporteurs, special representatives, independent experts and working groups which annually submit public reports to the Commission and, in some cases, to the General Assembly for consideration.

8. In recent years, it has been increasingly recognized that the reporting obligations under international treaties and the wide range of requests for information or clarifications, emanating from the various public or confidential procedures, has placed an onerous burden on many States, particularly developing countries. Attention has been drawn in this connection to the need to pay due attention to the possible simplification, rationalization and improvement of the methods of work of all existing procedures, while, at the same time, ensuring their effective functioning. It is in this context that the Commission on Human Rights, inter alia, bearing in mind that the 1503 procedure had been duly established for dealing with communications relating to allegations of human rights and fundamental freedoms, adopted resolution 1993/58 of 9 March 1993, in which it requested the Secretary-General to submit at its fiftieth session a report on:

(a) The original mandates assigned to the various treaty and non-treaty mechanisms established for the supervision, investigation and monitoring of the implementation of the provisions of international legal instruments and standards in the field of human rights;

(b) The international legal norms and standards on which existing non-treaty mechanisms now base their activities; as well as the conceptual framework, methods of work and procedural rules that each has deemed it advisable to apply in the discharge of its mandate;

(c) The various norms, criteria and practices established by each existing mechanism in regard to the admissibility of communications, as well as the preliminary consideration and evaluation of communications, their referral to the interested parties and the subsequent course followed in connection with them;

(d) The criteria used in practice by the Centre for Human Rights to channel communications either to existing public machinery or to bodies provided for in the confidential procedure governed by Economic and Social Council resolution 1503 (XLVIII), together with the legal foundation for such criteria.

9. The requested report, which gave an overview of the various existing mechanisms and the working methods used, was placed before the Commission at its fiftieth session in document E/CN.4/1994/42. It dealt in some detail with the coexistence of the 1503 procedure and a range of other procedures, treaty based and non-treaty based. Attention is drawn to paragraphs 50 to 58 of that

report (dealing with the origin and main features of the 1503 procedure), paragraphs 66 to 76 (dealing with the methods of work under the 1503 procedure) and 82 to 84 (dealing with the criteria used for determining whether a communication is channelled into the 1503 procedure or a public procedure), as well as to paragraphs 48 and 49 (dealing with the criteria for channelling communications into the 1503 procedure or a treaty based procedure).

10. At its fiftieth session, in resolution 1994/94, the Commission on Human Rights, taking note of the report submitted by the Secretary-General (E/CN.4/1994/42), decided that it should be considered in the course of the forthcoming rationalization of its work. The Commission requested that recommendations should be submitted with a view to improving the functioning, effectiveness, efficiency and coordination of the existing mechanisms and that specific recommendations be submitted so that the mechanisms could better carry out their work, while at the same time avoiding unnecessary duplication and waste of resources.

11. It may also be mentioned that in the Vienna Declaration and Programme of Action, adopted on 25 June 1993 by the World Conference on Human Rights and endorsed by the General Assembly on 20 December 1993 in its resolution 48/121, the World Conference recommended that:

> "the States parties to international human rights instruments, the General Assembly and the Economic and Social Council should consider studying the existing human rights treaty bodies and the various thematic mechanisms and procedures with a view to promoting greater efficiency and effectiveness through better coordination of the various bodies, mechanisms and procedures, taking into account the need to avoid unnecessary duplication and overlapping of their mandates and tasks" (part II, para. 88).

At the same time, the World Conference underlined the importance of preserving and strengthening the system of special procedures, rapporteurs, representatives, experts and working groups of the Commission on Human Rights and the Sub-Commission on the Prevention of Discrimination and Protection of Minorities (Part II, para. 95).

12. From the foregoing it can be seen that considerable effort has already been invested, and continues being invested, in the review of existing procedures and mechanisms in this field, including the procedure for dealing with communications relating to violations of human rights and fundamental freedoms governed by Economic and Social Council resolution 1503 (XLVIII).